

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

No. 4:11-CV-00076-FL

JULIUS LORENZO KELLEY, SR.,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,¹

Defendant.

ORDER

This matter is before the court on the Memorandum and Recommendation (“M&R”) of United States Magistrate Judge Robert B. Jones, Jr., entered November 29, 2011, regarding defendant’s motion to dismiss. No objections to the M&R have been filed, and the time within which to make any objection has expired. This matter is ripe for ruling.

The court hereby ADOPTS the recommendation of the magistrate judge as its own, and, for the reasons stated therein, defendant’s motion is GRANTED, and this matter is DISMISSED. The clerk of court is directed to close the case.

¹ Plaintiff identifies the defendant as “Social Security Administration.” Compl. 1. However, the proper defendant in an action seeking an award of Social Security disability benefits is the Commissioner of the Social Security Administration (“SSA”). 20 C.F.R. § 422.210(d) (“Where any civil action [against the SSA] is instituted, the person holding the Office of the Commissioner shall, in his official capacity, be the proper defendant.”); see also Keesing v. Apfel, 124 F. Supp. 2d 134, 135 (N.D.N.Y. 2000) (citing Ostroff v. Florida, Dep’t of Health & Rehab. Servs., 554 F. Supp. 347, 352 (M.D. Fla. 1983) (explaining § 405(g) only authorizes suits against the Secretary of Health and Human Services, now the Commissioner of Social Security)). Accordingly, no other agency or government official is a proper party defendant. The court dismisses the Social Security Administration as defendant and substitutes Michael J. Astrue, Commissioner of Social Security.

SO ORDERED, this the 29th day of December, 2011.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive style with a large initial "L".

LOUISE W. FLANAGAN
United States District Judge